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Federal Communications Commission November 9, 1992 Office of the Sepretary

BY HAND

Ms. Donna R. Searcy, Secretary Federal Communications Commission 1919 M Street, N.W. Washington, D.C. 20554

> In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services GEN Docket No. 90-314 & ET Docket No. 92-100

Dear Ms. Searcy:

Transmitted herewith for filing in the above-referenced dockets, please find an original and six copies of the Comments of Roseville Telephone Company.

Please date-stamp and return the attached courtesy copy of these Comments. If you have any questions regarding this matter, please contact the undersigned counsel.

Sincerely,

Paul J. Feldman

Counsel for

Roseville Telephone Company

PF:ik Enclosure

ORIGINAL

BEFORE THE

Federal Communications Commission

ORIGINAL FILE

WASHINGTON, D.C. 20554

| In the Matter of |) GEN Docket No. 90-314) ET Docket No. 92-100 | |
|---|---|--|
| |) RM-7140, RM-7175, RM-7617, RM-7618, RM-7760, RM-7782, | |
| Amendment of the Commission's Rules to Establish New Personal Communications Services |) RM-7860, RM-7977, RM-7978,) RM-7979, RM-7980) | |
| To: The Commission | | |

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

ROSEVILLE TELEPHONE COMPANY

George Petrutsas Paul J. Feldman

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November 9, 1992 PF#1/COVER

SUMMARY

The Commission seeks to optimize and balance four goals in providing a regulatory structure to PCS: universality, speed of deployment, diversity of services and competitive delivery.

Local exchange carriers ("LECs") and cellular telephone carriers are particularly qualified to provide PCS, and provision of PCS by these carriers will advance these four goals.

LECs are well qualified to provide high quality communications services to consumers in a timely manner. LECs already have years of technical knowledge and experience in matters such as network planning, construction and interconnection. Furthermore, when this experience is combined with their existing networks, it is clear that LECs will be able to provide the benefits of PCS to consumers much more quickly than any "start-up" operators. Provision of PCS by LECs will also advance the goal of universal service, especially in rural and small town areas. Lastly, because PCS is likely to complement, as well as be a potential competitor to, local wireline exchange service, LECs should be allowed to incorporate complementary advanced mobile technologies and services such as PCS into their networks, so that they can provide these services to their customers on a competitive basis.

Roseville submits that the public interest would be well served if the Commission sets aside one PCS license in each service area for use by LECs. In addition to the reasons stated above, it must be noted that advanced mobile services from light weight portable phones are destined to soon become an integral part of "basic" telephone service. While other PCS licensees will

provide interesting and important services to businesses and consumers, LECs are the <u>only</u> companies that have always been, and will continue to be, relied on to provide basic service to consumers. LECs must be allowed to modernize their facilities and participate in the revolution that will transform the nature of basic service well into the 21st century.

For reasons similar to those stated above, incumbent cellular carriers should be allowed to provide PCS in their cellular service areas. As the Commission recognizes, the efficiencies of allowing incumbent cellular carriers to provide PCS should reduce expenses and lower costs for customers. Furthermore, the proposed PCS regulatory regime will limit any potential anti-competitive effects, especially if license areas are kept small and the Commission authorizes a large number of PCS providers per service area. Such smaller service areas would also promote greater diversity of services and rapid implementation of service to consumers.

Comparative consideration is the best of the proposed licensing mechanisms, since it will assure that the licensees chosen will have the proven commitment and ability to serve the public. If the Commission decides to reject comparative consideration, lotteries would be a far better alternative than competitive bidding. Because competitive bidding would limit competition by eliminating participation by smaller companies, and because Commission attempts to obtain authority to use bidding would delay the implementation of PCS, this method must be rejected.

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To: The Commission

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

Roseville Telephone Company ("Roseville") hereby submits it comments in response to the Commission's Notice of Proposed Rulemaking In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 92-333, (the "Notice").

I. INTRODUCTION

In its <u>Notice</u>, the Commission seeks comments on a wide variety of issues required to structure the regulatory treatment of Personal Communications Services ("PCS"). Roseville agrees with the Commission's conclusion¹ that PCS is the next step in an on-going revolution in mobile communications that will have a substantial impact on the future development and configuration of all telecommunications networks. As a local exchange carrier ("LEC") and partner in a major provider of cellular telephone services, these changes will directly effect Roseville.

Roseville serves in excess of 85,000 subscriber access lines in the Roseville, California area. Roseville has been providing

Notice at para. 3.

high quality wireline services for over 75 years, and it is the 25th largest LEC in the nation. Roseville also has a limited partnership interest in Sacramento Valley Limited Partnership, which provides cellular telephone service to six MSAs and three RSAs in California and Nevada.

Roseville believes that mobile communications will play an increasingly important role in the future of communications networks. Advanced mobile services such as PCS will be needed to satisfy growing consumer demand for communications technologies that fit into the increasingly mobile and fast-paced life styles of the public, and such services may ultimately become an integral part of "basic" telephone service. Roseville believes that LECs are uniquely qualified to provide the personal communications services that will meet these new demands, and thus, they should be given the opportunity to do so.

II. LICENSING ISSUES

A. Eliqibility Requirements

The Commission seeks to optimize and balance four values in providing a regulatory structure to PCS: universality, speed of deployment, diversity of services and competitive delivery.

Notice at para. 6. Provision of PCS by LECs and existing cellular carriers will advance these goals.

1. Local Exchange Carriers

Roseville is encouraged by the Commission's recognition of the importance of allowing LECs to provide PCS within their respective service areas. As shown below, such provision will clearly serve the public interest. a. LECS are Well Qualified to Provide High Quality Mobile Services

No parties (other than existing cellular carriers) are as well qualified as LECs to provide the high quality network mobile services that consumers will expect from PCS. LECs have the financial and human resources required to build and operate complex telecommunications systems. LECs already have the requisite technical knowledge and years of experience in network planning and construction, interconnection, and customer service and billing. LECs are the only parties that can bring to this task, knowledge of, and demonstrated commitment to serve, the communications needs of their entire local community. Lastly, LECs have a proven record of quality service.

b. LECs Will be Able to Provide PCS in a Timely Manner

Speed of deployment is a major regulatory goal in this proceeding. Notice at para. 6. When the LEC resources described above are combined with their existing networks, which can provide immediate backhaul, network intelligence and billing functions, it is clear that LECs will be able to provide the benefits of PCS to consumers much more quickly than any "start-up" operators.

C. LEC Provision of PCS Will Promote Efficient
Use of the Imbedded Wireline Network

The imbedded wireline network is an important societal resource. LEC provision of PCS will maximize the use of this resource. LECs are already providing wireline "personal communications" services such as call forwarding, which allow subscribers at remote locations to receive calls originally directed to their offices and homes. Wireless PCS services would

allow LECs to efficiently and seamlessly extend the reach and utility of these existing services. LEC provision of PCS will also result in other substantial efficiencies: as the Commission noted, wireless tails or loops may be more economical than use of wire in certain areas, and the ability to use their own wireline network for backhaul functions should reduce expenses for LECs and, accordingly, costs to consumers. Notice at para. 73.

d. LEC Provision of PCS Will Promote Efficient Interconnection With the Public Switched Network

The Commission has recognized that the growth of diverse PCS services will require efficient interconnection with the public switched network. Notice at para. 72. While LECs will in any case provide non-discriminatory and efficient interconnection to non-affiliated PCS providers, LEC provision of PCS as well as interconnection service will speed development of the most efficient and advanced interconnection technologies.

e. LEC Provision of PCS Will Promote Universal Service

There is broad recognition of the need and of the Commission's obligation to promote universal service.²
Fulfillment of this goal promotes regional equity and creates positive economic externalities. It is important to recognize that as telecommunications technology changes, the definition of the "service" in "universal service" must be constantly expanded. In the 1990's and beyond, such "service" cannot fairly

See Section 1 of the Communications Act, and Pressler and Schieffer, A Proposal for Universal Telecommunications Service, 40 Fed. Comm. L.J. 351 (1988).

be limited to "plain old telephone service," but must include advanced mobile services such as PCS.³

Paying attention to universal service is particularly important when considering the impact of telecommunications regulation on the rural and small town areas of our country. First, it is no secret that rural America has historically lagged behind other areas in the availability of telephone services. More importantly, the availability of advanced telecommunications services and technologies is critical to the economic revitalization of these areas.⁴

It is commonly recognized that "[1]eft entirely to itself, the communications industry will focus its energies, resources, and innovation on the more profitable population centers." Accordingly, if the Commission is to integrate the goal of universal service into the regulatory structure of PCS, it must recognize the role played by that part of the telecommunications industry with a demonstrated commitment to serving rural and small town America: independent LECs. These LECs may be the only parties willing to invest in and provide PCS to their communities. The Commission must allow these LECs to receive PCS licenses in their service areas.

Telecommunications and Information Administration, 1991) at 305.

⁴ Id. at 292.

⁵ A Proposal for Universal Telecommunications Service, supra note 2, at 352.

f. LEC Provision of PCS Will Promote Competition in the PCS Market

Roseville agrees with the Commission's conclusion that PCS is likely to complement, as well as be a potential competitor to, local wireline exchange service. Notice at para. 71.

Accordingly, LECs should be allowed to incorporate complementary advanced mobile technologies and services such as PCS into their networks, so that they can provide these services to their customers. Allowing LECs to provide PCS will promote competition, since without such capabilities, LECs could not fully compete with new PCS providers.

The Commission concerns (Notice at para. 72) that LECs will discriminate in interconnecting competitors and will cross-subsidize PCS expenses from wireline revenues are not well founded. There is no evidence that such behavior has occurred over the past 10 years of wireline provision of cellular services. Indeed, LECs generally, and Roseville in particular, have a good record of providing non-discriminatory interconnection to non-affiliated cellular, paging and SMR companies. In any case, the non-structural safeguards proposed in the Notice will prevent any anti-competitive behavior. Thus, allowing LECs to provide PCS will not restrict competition in the PCS market.

g. The Commission Should Reserve One PCS License in Each Service Area for LECs

Roseville believes that the Commission should allocate equal amounts of spectrum for five PCS licensees per service area. Because this plan would create five PCS providers per service area, it would maximize competition in the PCS market. In

addition, five PCS providers per service area would lead to a greater diversity of services.

Roseville further submits that the public interest would be well served if the Commission sets aside one PCS license in each service area for use by LECs. As was noted above, LECs are uniquely qualified to provide advanced mobile services to the public in a timely manner; such provision would promote efficient use of the embedded wireline network and the efficient interconnection of PCS with that network; and such provision would promote universal service and competition. Most important, however, is the fact that advanced mobile services from light weight portable phones are destined to soon become an integral part of "basic" telephone service. While other PCS licensees will provide interesting and important services to businesses and consumers, LECs are the only companies that have always been, and will continue to be, relied on to provide basic service to consumers. 6 LECs must be allowed to modernize their facilities and participate in the revolution that will transform the nature of basic service well into the 21st century. Without a LEC setaside, consumers in areas where the LEC has not been able to

The Commission apparently recognized this point in its Notice of Inquiry in this proceeding, where it stated that:

it could be argued that local exchange carriers, many of whom also provide cellular service, should not be barred from applying for PCN licenses in their service area. For example, we recognize that an argument can be made that, to the extent that PCN systems will provide telecommunications systems that complement the current landline system, the local exchange carriers should be able to participate in PCN service in order that they may continue to provide by radio those services that they have historically provided by wire.

⁵ FCC Rcd 3995,3999 (1990).

obtain a PCS license will be forced to use sub-par basic service. Such a result would be an ironic consequence of the Commission's attempt to promote advances in communications technology.

The Commission also seeks comments on a proposal to allow LECs to acquire only a <u>limited</u> amount of spectrum for provision of PCS. Notice at para. 77. The only justification even vaguely suggested by the Commission for this unwise discrimination is that LECs might need less spectrum for PCS operations since they could use their wireline networks for backhaul functions. Notice at para. 73. There is no evidence to substantiate this theory. Furthermore, if this theory is indeed the proposed justification for giving LECs less spectrum than other providers, it contradicts the Commission's decision, set forth in paragraph 55 of the Notice, that PCS support functions using spectrum should not use spectrum allocated specifically for PCS, but rather, should use other fixed microwave bands. Thus, there is no reason to allocate less frequency to LECs than to non-LEC providers of PCS.

Nevertheless, if the Commission decides to require LECs to use smaller blocks of spectrum, such spectrum blocks should be additionally allocated from the emerging technologies band.

Notice at para. 78. LECs should not be limited to acquiring spectrum in the "aftermarket." Id. If this is the only way for LECs to obtain spectrum for PCS, such a regulatory structure would only delay LEC provision of PCS with no stated justification, and would penalize LECs with a major expense not placed on their competitors.

2. Incumbent Cellular Licensees

In the Notice (para. 64), the Commission suggests that allowing cellular licensees to acquire licenses to provide PCS in their cellular service areas might unacceptably reduce competition in this new service. While there is a potential similarity between PCS and cellular services, there will be substantial differences between these two services that will preclude the destructive competition anticipated by the Commission. PCS systems are expected to be configured differently than and will target a different category of users than that targeted by cellular providers: relevant PCS proposals use microcell technology and small portable phones which are designed to maximize their service primarily to pedestrian traffic, while cellular service, with larger cells and telephones, is designed to maximize service primarily to vehicular users.

The Commission has created an issue over the licensing of incumbent cellular carriers by posing a false dilemma in the Notice: i.e., which will lead to lower prices -- interservice competition (cellular vs. PCS) or efficiencies obtained by provision of both services by incumbent cellular companies? The answer is -- both! As the Commission recognizes, the efficiencies of allowing incumbent cellular carriers to provide PCS should reduce expenses and lower costs for customers. Notice at para. 66. Nevertheless, other parts of the regulatory regime will promote substantial competition, especially if license areas are kept small and the Commission authorizes a larger number (that is 5, rather than 3) of PCS providers per service area.

In an inadequate attempt to resolve this false dilemma with a compromise, the Commission proposes to allow cellular carriers to provide PCS in their service areas, but only on frequencies already authorized for cellular service. Cellular companies should not be forced to make this Hobson's Choice: they need their current spectrum for existing and growing cellular use. There is no evidence that PCS will reduce the demand for traditional cellular service, since the two services target different types of users and are likely to create different customer perceptions, and since there are numerous different PCS proposals involving voice, data and position determination. In addition, PCS may increase demand for cellular, since new customers will be introduced to the benefits of mobile communications.

While there is no reason to exclude incumbent cellular carriers from providing PCS, like LECs, there are important reasons to allow them to participate. First, cellular carriers are well qualified to provide PCS services in their cellular service areas. Cellular carriers not only have the requisite resources and experience in providing high quality mobile voice communications generally, but they have experience in overcoming the problems caused by geography and terrain in their specific areas. And because they already have vast mobile communications networks in place, they are well positioned to provide rapid implementation of PCS.

Thus, there is no reason to exclude incumbent cellular carriers from providing PCS in their cellular service areas, since the services target different categories of users.

Furthermore, maximizing the number of service areas and PCS providers therein will guarantee the existence of substantial competition. Accordingly, the Commission should allow cellular carriers to obtain licenses to provide PCS in their cellular service areas.

B. Service Areas

The <u>Notice</u> proposes four different options for determining the size of service areas, from nationwide licenses to 487 "basic trading areas." Roseville believes that smaller service areas would be most appropriate for the low-power microcell systems designed to serve pedestrian users. Furthermore, smaller service areas would better advance the four general goals set forth in the <u>Notice</u>.8

First, smaller areas would result in more PCS service providers, which is likely to promote greater diversity of services and technologies. In addition, more service providers will obviously increase the competitive nature of the market. Smaller service areas will also reduce the expense of constructing and operating individual systems, thus allowing smaller companies to provide PCS. This factor is especially

As discussed above, the Commission should not bar cellular companies from obtaining PCS licenses in their cellular service area, but if the Commission does enact such a rule, it should not bar LECs which have holdings in such cellular carriers from obtaining PCS licenses. Many smaller LECs, such as Roseville, have minority limited partnership interests in cellular carriers, but such interests give the LEC no operational control over the provision of cellular services. For Bell Operating Companies, the existing separate subsidiary requirements create the same effect.

Universality, speed of deployment, diversity of services and competitive delivery. Notice at para. 6.

important in considering the provision of service to rural and small town areas where smaller populations would not justify larger investments. Smaller service areas would thus promote competition in these areas, and would advance the goal of universal service. Lastly, smaller service areas would allow systems to be constructed and turned on more quickly, thus advancing the goal of rapid implementation of PCS to consumers.

In light of the above factors, Roseville urges the Commission to consider the use of the 734 MSAs and RSAs used to determine cellular telephone service areas. In addition to considerations of size, it should be recognized that many potential PCS providers are already familiar with the nature of such individual MSAs and RSAs. Furthermore, the Commission is already familiar with administering such service areas.

C. <u>Licensing Mechanism</u>

The <u>Notice</u> discusses three options for selecting among mutually exclusive PCS applications: comparative hearings, lotteries, and if authorized by Congress, competitive bidding. Roseville believes that comparative consideration would be the best mechanism to select among competing applicants. Comparative consideration will assure that the licensees chosen will have the proven commitment and ability to serve the public. While the <u>Notice</u> rejects the use of hearings because they may be slower than other licensing mechanisms, there are obvious filing

In choosing licensing areas for the new interactive video and data service, the Commission used the 734 MSAs and RSAs, and noted that "cellular service areas are well known to the communications industry." <u>Interactive Video and Data Services, Report and Order</u>, 7 FCC Rcd 1630,1638 (1992).

requirements that could limit the number of applicants¹⁰ and thus speed up the hearing process: "letter perfect" application standards, filing windows, and substantial showings of technical and financial qualifications. Furthermore, substantial application fees would reduce the number of applicants and reduce the financial burden of hearings on the Commission. ¹¹

If the Commission decides to reject comparative consideration, lotteries would be a far better alternative than competitive bidding. While lotteries allow for substantial participation by speculators, the administrative crush of applications could be reduced by requirements suggested above: "letter perfect" application standards and filing windows. Furthermore, the Commission should require submission of detailed technical and business proposals, and proof of financial resources, shortly (3 days) after selection of the tentative licensee. The Commission should not initially select an alternative in case the winner turns out to be unqualified. Such a selection only creates a party with a great incentive to slow down the licensing for a particular area. If the tentative selectee is found to be unqualified, holding a lottery with the

As noted above, Roseville believes that the public interest requires the Commission to set aside one license in each service area for use by a LEC. While some service areas will have more than one LEC, there will still be only a small number of competing applicants for such LEC set-asides. Thus, the LEC set-aside proposal will substantially limit the number of applicants, and should speed up the licensing process, for one PCS license in each service area.

While such fees should be substantial enough to discourage speculators, they should not be so large as to discourage serious but small applicants. The \$6,760 fee currently authorized for the filing of comparative common carrier applications would be an appropriate compromise.

remaining applicants would not require the expenditure of substantial new Commission resources. In any case, the Commission should also impose strict deadlines on construction and commencement of operations of new systems.

The proposal to use competitive bidding is clearly contrary to the public interest. This mechanism would eliminate some, but certainly not all, speculators. And while the bidding fees would minimally boost the treasury, they would hamper competition by requiring PCS licensees to pay substantial sums for spectrum, a burden not placed on many potential competitors of PCS in other services (e.g., wireline carriers, and cellular and paging companies) who acquired licenses through lotteries or other FCC licensing mechanisms. 12 Furthermore, by limiting the provision of PCS to those parties with the "deepest pockets," the Commission would eliminate the opportunity for smaller companies that may have the most innovative proposals from providing service to the public. Lastly, the Commission's current lack of authority to use competitive bidding renders this proposal unacceptable, since Commission attempts to obtain such authority prior to the licensing of PCS providers would lead to further delays in the implementation of this service.

D. Regulatory Status

Roseville agrees with the Commission's conclusion that because PCS services will be subject to substantial competition,

In addition, competitive bidding would likely raise the cost of service to consumers, since the payment of large fees would have to be recovered by the provider through raising prices for services.

from other PCS providers as well as from paging, SMR, cellular carriers and cordless phones, consumers will not need protection from monopoly abuses and PCS should accordingly be subject to minimal regulation. Notice at para. 94. Excessive regulation could strangle or excessively damper the growth and diversity of PCS services and technologies.

Because the personal communications services envisioned by Roseville will likely involve the resale of interconnected telephone service, such services could not be classified as private land mobile radio. And while such services should be regulated as common carriage, PCS providers should be subject to the same sort of regulatory structure as cellular carriers: federal licensing and technical regulations, with rate regulation only by the states that chose to do so. Forbearance from the requirement to file federal tariffs will encourage greater price competition and enhance the ability of providers to respond quickly to market trends. Such forbearance should also allow providers to have greater flexibility in creating and introducing innovative services.

III. CONCLUSION

The deployment of personal communications services will provide significant benefits to American consumers and businesses. The public interest will clearly be served by allowing local exchange carriers and incumbent cellular carriers to use their human, financial and technical resources, as well as their networks, to promote the rapid implementation of PCS.

Participation by these carriers will maximize the Commission's

regulatory goals of universality, rapid deployment, diversity of services and competitive delivery.

Respectfully submitted,

ROSEVILLE TELEPHONE COMPANY

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November 9, 1992